

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE: CATHODE RAY TUBE (CRT))	MDL No. 1917
ANTITRUST LITIGATION)	
)	Case No. C-07-5944-SC
)	
This Order Relates To:)	ORDER APPOINTING SPECIAL
)	<u>MASTER</u>
)	
ALL ACTIONS)	
)	

The Court has suggested the appointment of Mr. Martin Quinn as an additional Special Master for this case. See Fed. R. Civ. P. 53(a)(1)(A), 53(a)(1)(C). The Court gave the parties an opportunity to be heard by permitted parties to submit objections via an order to show cause. See Order of the Court dated September 2, 2015, ECF No. 4033 ("Show Cause Order"), Fed. R. Civ. P. 53(b)(1). The Court received two objections, plus a response to one of the objections. See ECF Nos. 4043, 4046, 4049. Parties objected to the form of this Order, not to Mr. Quinn himself. The Court granted a hearing, held on September 11, 2015. Parties were then provided a draft order, and the Court entertained objections. See ECF Nos. 4053, 4062, 4068. The Court now finds that parties have had a full, fair opportunity to be fully heard on this matter. Objections are accommodated in this Order or else are OVERRULED.

1 The Court finds that parties have consented to a Special Master
2 performing these duties as presently anticipated, which excludes
3 the pending DPP settlement. See Fed. R. Civ. P. 53(a)(1)(A). The
4 Court accepts as true assertions by certain Counsel made during the
5 hearing on September 11, 2015 that it will not be necessary for the
6 Special Master to review a fee motion for DPPs, but reserves the
7 right to refer the matter to the Special Master should Counsel
8 prove to be incorrect. The Court also finds that determinations of
9 attorneys' fees and related matters being referred to Mr. Quinn are
10 "posttrial matters that cannot be effectively and timely addressed
11 by an available district judge or magistrate judge of the
12 district." See Fed. R. Civ. P. 53(a)(1)(C). Accordingly,
13 appointment of a Special Master is proper.

14 WHEREFORE, IT IS HEREBY ORDERED that, pursuant to Federal Rule
15 of Civil Procedure 53, Mr. Martin Quinn is appointed as Special
16 Master to supervise and preside over all "designated posttrial
17 matters," as defined herein.

18 The Special Master has filed a declaration under 28 U.S.C. §
19 455 stating that there is no ground for disqualification. During
20 the course of these proceedings, the Special Master and the parties
21 shall notify this Court immediately if they become aware of any new
22 potential grounds that would require disqualification.

23 **1. Scope of Duties**

24 This Order shall apply to all cases currently pending in MDL
25 No. 1917 and to all related actions that have been or will be
26 originally filed in, transferred to, or removed to this Court and
27 assigned thereto (collectively, "the MDL proceedings"). This Order
28 is binding on all parties and their counsel in all cases currently

1 settling or subsequently settling whose posttrial matters fall
2 within the scope of the designated posttrial matters detailed
3 below. This presently includes settling Indirect Purchaser
4 Plaintiffs, though may in the future include other settling parties
5 should the Court believe the circumstances of those settlements
6 satisfy Fed. R. Civ. P. 53(a)(1)(A) or (C). In such circumstances,
7 the Court will not initiate separate appointment procedures to
8 appoint Mr. Quinn as a Special Master, as he has already been
9 appointed, but will permit parties to file objections upon good
10 cause shown that a circumstance has changed or newly come to light.

11 Pursuant to Rule 53(a)(3), the Court has considered the
12 fairness of imposing the likely expenses of the Special Master on
13 the parties. The Court believes that the appointment and use of
14 the Special Master will materially advance the litigation, thereby
15 achieving considerable cost-savings to all parties. The Court will
16 protect against unreasonable expenses and delay through regular
17 communication with the Special Master and Lead Counsel for the
18 Indirect Purchaser Plaintiffs or other relevant Counsel.

19 Pursuant to Rule 53(b)(2)(A), the Special Master shall
20 adjudicate all designated posttrial matters. These matters shall
21 include assisting the Court with the approval of the pending
22 settlements in the Indirect-Purchaser Cases, the determination of a
23 fair, reasonable, and adequate aggregate award of attorneys' fees
24 and the reimbursement of expenses to all plaintiffs' counsel, a
25 fair and reasonable division of the aggregate award among
26 plaintiffs' counsel, and service awards to the named plaintiffs,
27 including any objections to these matters, and dealing with any
28 other matters that the Court may direct him to undertake. This

1 specifically excludes pretrial discovery disputes, excludes
2 disputes arising during the course of pretrial depositions, and
3 excludes any pretrial motion. Such disputes have been previously
4 assigned to Judge (Ret.) Walker or Magistrate Judge (Ret.) Larson
5 (appointment subject to objections), whose present and pending
6 appointments as Special Masters remains unaffected by this separate
7 appointment of a third, distinct Special Master.

8 The Special Master may approach these duties in whatever
9 manner he deems proper. For example, he may (but is not required
10 to) ask Lead Counsel for the Indirect Purchaser Plaintiffs to
11 allocate the attorneys' fees among Plaintiffs' Counsel in the first
12 instance in a manner which Lead Counsel in good faith believes
13 reflects the contributions of such counsel to the prosecution and
14 settlement of the Action. However, all aspects of such allocation
15 must remain entirely subject to the Special Master's review.
16 Moreover, and to alleviate concern by certain parties, the Special
17 Master must expressly consider and include within a Report and
18 Recommendation a review of the appropriate allocation of the
19 aggregate award among each of the plaintiffs' firms who have
20 contributed to this litigation, to include division of fees and
21 reimbursement of costs.

22 The Special Master shall assist the Court by preparing reports
23 and issuing recommendations in the Indirect Purchaser Cases or
24 other, later assigned cases on the subjects of: (1) final approval
25 of the pending settlements, including any objections thereto; (2)
26 the aggregate award of attorneys' fees and expenses to all
27 Plaintiffs' Counsel; (3) a fair and reasonable division of the
28 aggregate award among plaintiffs' counsel; (4) service awards to

1 named Plaintiffs, including any objections thereto; and (5) the
2 reimbursement of the parties' expenses, including any objections
3 thereto. See Fed. R. Civ. P. 53(e). All recommendations submitted
4 by the Special Master concerning these matters shall be filed and
5 served as set forth below.

6 The Special Master is authorized to retain independent
7 auditors, accountants, and clerical assistants to assist him with
8 the preparation of any report concerning expenses or fees.

9 In connection with his duties, the Special Master is
10 authorized to employ such processes, and to request such evidence
11 and information, in whatever form is appropriate, as will
12 contribute to a fair and efficient resolution of such issues.

13 **2. Special Master's Authority**

14 The Special Master shall have all the authority provided in
15 Rule 53(c), including but not limited to the authority to set the
16 date, time and place for all hearings, to preside over hearings
17 (whether telephonic or in-person), to take evidence, to conduct
18 telephonic conferences to resolve disputes arising during
19 depositions, to recommend contempt sanctions to the Court, and to
20 issue orders awarding non-contempt sanctions, including, without
21 limitation, the award of attorneys' fees, as provided by Rules 37
22 and 45. The Special Master may determine disputes arising from
23 failing to abide by sanctions set forth by the Special Master. The
24 Special Master is authorized to receive and consider information
25 designated as confidential pursuant to the Protective Order entered
26 in this matter, and may review privileged material in camera. The
27 Special Master agrees to be bound by said Protective Order.

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1 **3. Procedure for Motions Submitted to the Special Master**

2 The procedural requirements contained in the Court's Pretrial
3 Orders shall govern any motion practice before the Special Master,
4 unless the Special Master orders otherwise.

5 **4. Preservation of Record**

6 **a. Preservation of Materials and Preparation of Record**

7 Pursuant to Rule 53(b)(2)(c), the Special Master shall
8 maintain orderly files consisting of all documents submitted to him
9 by the parties and of any of his written orders, findings and/or
10 recommendations. Pursuant to Rule 53(e), the Special Master shall
11 file any written orders, findings, and/or recommendations with the
12 Court via the Court's Electronic Case Filing ("ECF"). Such filing
13 shall fulfill the Special Master's duty to serve his orders on the
14 parties.

15 **b. Special Master's Reports to Court**

16 Pursuant to Rule 53(e), the Special Master shall issue orders
17 on motions presented to him which shall be final and not require
18 the Court's signature, subject to the parties' right to file
19 objections as described below. Further, the Special Master shall
20 prepare reports and recommendations to the Court on the subjects
21 stated herein. If the Special Master considers it advisable to
22 make any other report to the Court, he shall do so in accordance
23 with Rule 53(e).

24 **5. Action on Orders, Reports, or Recommendations**

25 Pursuant to Rule 53(f), the procedures described in paragraphs
26 5(a)-(d) herein shall govern any action on the Special Master's
27 orders, reports and/or recommendations.

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a. Time Limits for Review

Any party wishing to file objections or a motion to adopt or modify the Special Master's orders, reports and/or recommendations must file such objections or motion with the Court within 14 days from the day the Special Master filed the order, report, and/or recommendation via ECF. Any order issued by the Special Master shall remain in effect pending any such objection or motion. Any opposition shall be filed within 7 days after the objection on the motion is filed.

b. Filing the Record for Review

The party filing the objection or motion shall submit with such objection or motion any record necessary for the Court to review the Special Master's order, report and/or recommendation, including any transcripts of proceedings before the Special Master and any documents submitted by the parties in connection with the Special Master's order, report and/or recommendation. Failure to provide the record shall constitute grounds for the Court to overrule the objection or deny the motion.

c. Standard for Review

Pursuant to Rule 53(f)(3)-(5), the Court shall review findings of fact made or recommended by the Special Master for clear error. The Court shall review de novo any conclusions of law made or recommended by the Special Master. The Court will set aside the Special Master's ruling on a procedural matter only for an abuse of discretion.

d. Court's Actions on Special Master's Orders

Pursuant to Rule 53(f)(1), in acting on an order or R&R of the Special Master, the Court shall afford the parties an opportunity

1 to present their positions and, in its discretion, may receive
2 evidence, and may adopt or affirm; modify; wholly or partly reject
3 or reverse; resubmit to the Special Master with instructions; or
4 make any further orders it deems appropriate.

5 **6. Ex Parte Communications**

6 Pursuant to Rule 53(b)(2)(B), the Special Master may
7 communicate ex parte with the Court at any time. Generally, the
8 Special Master shall not communicate ex parte with any party
9 without first providing notice to, and receiving consent from,
10 Plaintiffs' Lead Counsel and Counsel for any other interested
11 party. However, without providing notice or obtaining consent, the
12 Special Master may communicate ex parte with a party for the
13 limited purposes of administrative matters such as scheduling
14 hearings, telephone calls or briefing, if such arrangements cannot
15 be made in a timely manner by contacting the Special Master's
16 administrative assistant.

17 **7. Compensation**

18 Pursuant to Rule 53(g), the Special Master shall be
19 compensated at an hourly rate of \$700.00 for his services as
20 Special Master in the MDL proceedings, plus the Administrative Fee
21 charged by JAMS, and shall be reimbursed for any out-of-pocket
22 expenses (e.g. cost of accountants, auditors and clerical
23 assistants, and expenses for telephone conference calls). The
24 Special Master shall not charge for travel time. The Special
25 Master shall prepare a monthly invoice for his services, which he
26 shall provide to Lead Counsel for the Indirect Purchaser Plaintiffs
27 (or such other counsel as the Court should in the future direct) to
28 be paid from the Litigation Fund. In connection with objections

1 and discovery matters, the parties shall each pay an equal share of
2 the cost.

3 **8. Diligence**

4 Pursuant to Rule 53(b)(2), the Court hereby directs the
5 Special Master to proceed with all reasonable diligence in
6 performing his duties in the MDL proceedings.

7 Within seven (7) days of this order or according to such
8 schedule as the Special Master may otherwise publish, all parties
9 with pending designated posttrial matters shall contact the Special
10 Master to discuss the execution of his duties in connection with
11 this order.

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13 IT IS SO ORDERED.

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15 Dated: September 24, 2015



16 UNITED STATES DISTRICT JUDGE
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